

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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SCOTT MARLIN MOREY,

Case No. 19-CV-253 (NEB/HB)

Petitioner,

v.

ORDER ACCEPTING REPORT AND  
RECOMMENDATION

JEFF TITUS, Warden, MCF–Rush City,

Respondent.

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In a June 10, 2019 Report and Recommendation [ECF No. 22 (“R&R”)], United States Magistrate Judge Hildy Bowbeer recommends denying Petitioner Scott Morey’s motion to stay this action pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), and dismissing this action without prejudice unless Petitioner files a new, amended petition that includes only Petitioner’s fully exhausted claims, and setting forth the facts supporting exhaustion of each claim. Petitioner responded to the R&R. [ECF No. 23 (“Response”).] In his response, Petitioner does not specifically object to the R&R, but renews his request for a *Rhines* stay, advancing no new legal argument or authority. (*See* Response at 4.)

Upon the filing of a report and recommendation by a magistrate judge, a party may “serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2); *accord* D. Minn. LR 72.2(b). “The district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3). “The objections should specify the portions

of the magistrate judge's report and recommendation to which objections are made and provide a basis for those objections." *Woolery v. Peterson*, No. CV 16-1745 (JRT/FLN), 2016 WL 6916801, at \*1 (D. Minn. Nov. 22, 2016) (quoting and citing *Mayer v. Walvatne*, No. 07-1958, 2008 WL 4527774, at \*2 (D. Minn. Sept. 28, 2008)).

Since Petitioner's response merely repeats his request, it is not a proper objection to the R&R, and the Court reviews the R&R for clear error. *See e.g. Woolery*, 2016 WL 6916801, at \*1 (quoting and citing *Montgomery v. Compass Airlines, LLC*, 98 F. Supp. 3d 1012, 1017 (D. Minn. 2015) ("Objections which are not specific but merely repeat arguments presented to and considered by a magistrate judge are not entitled to *de novo* review, but rather are reviewed for clear error.")). Similarly, courts have found the Magistrate Judge's recommendations may be reviewed as if no objections were filed when a party "does not cite any reason why the Magistrate Judge's determination was incorrect, nor any basis for th[e] Court to reach a different outcome." *Reed v. Curry Concrete Const., Inc.*, No. CV 10-4329 JRT/LIB, 2011 WL 2015217, at \*2 (D. Minn. May 23, 2011) (quotation marks and citations omitted). Here, Judge Bowbeer did not clearly err in recommending the Court dismiss this matter should the Petitioner fail to file an amended petition including only his fully exhausted claims.

Finding no clear error, and based upon all the files, records, and proceedings in the above-captioned matter, IT IS HEREBY ORDERED THAT:

1. The Report and Recommendation [ECF No. 22] is ACCEPTED;

2. Plaintiff Scott Marlin Morey's Motion to Stay this action pursuant to *Rhines v. Weber*, 544 U.S. 269 (2005), [ECF No. 2] is DENIED; and
3. If Morey does not file an entirely new, amended petition that includes only fully exhausted claims within 30 days of the date of this Order, his Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2254 [ECF No. 1] will be DISMISSED WITHOUT PREJUDICE, and no certificate of appealability be issued.

Dated: August 2, 2019

BY THE COURT:

s/Nancy E. Brasel  
Nancy E. Brasel  
United States District Judge